Title 28, United States Code, Section 1254 (1) and Rule 22 (2).

III.

QUESTIONS PRESENTED

A. Whether an accused is denied the right to a fair trial under the Sixth Amendment to the Constitution of the United States by a trial court's refusal to strike the direct and re-direct testimony of the Government's chief witnesses when

(1) such testimony is the proof of one of the contested elements of the crime with which the accused is charged, and

(2) the witness has successfully invoked the privilege against self-incrimination and refused to answer germane questions on the same subject matter on cross and re-cross examination.[1]

B. Whether it is a crime against the United States under Title 18, United States Code, Section 1073, for a person charged with robbery in one state to travel in interstate or foreign commerce with intent to avoid prosecution for that robbery when the travel does not originate in the charging state and is not a part of a trip which originated in the charging state.

---

[1] The petitioner contends that the evidence admitted by the trial court on the contested element of the crime referred to in this question – namely, Richard James Young's intention in making the interstate and foreign travel – was insufficient to sustain petitioner's conviction. If this petition is granted, petitioner would like to present this issue for determination as a subsidiary and related question.

IV.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional provisions involved are the Fifth and Sixth Amendments to the Constitution of the United States. The statutes involved are Title 18, United States Code, Sections 2, 3, 4, and 1073. All are printed in Appendix A, *infra*, pp. 1a, 2a, with the exception of Title 18, United States Code, Section 1073, the printing of which follows:

§ 1073. *Flight to avoid prosecution or giving testimony.*

Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of said State, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony under the laws of such place, or which in the case of New Jersey, is a high misdemeanor under the laws of said State, is charged, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement and only upon formal approval in writing by the Attorney General or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated. (62 Stat. 683. As amended Apr. 6, 1956, c. 177 § 1, 70 Stat. 100; Oct. 4, 1961, Pub. L. 87-368, 75 Stat. 795)

V.

STATEMENT

The petitioner was indicted in the District Court of the United States for the Western District of Washington, Northern Division, on October 14, 1963. The accusation purported to allege two violations of Title 18, United States Code, Sections 1073 and 2; two violations of Title 18, United States Code, Section 4; and one violation of Title 18, United States Code, Sections 1073 and 3.

Jurisdiction was conferred upon the District Court under the provisions of Title 18, United States Code, Section 3231.

An essential element to each of the first two counts of the Indictment (as supplemented by the Bill of Particulars) was the accusation that on or about March 8, 1963, one Richard James Young committed a crime against the United States under the provisions of Title 18, United States Code, Section 1073, by travelling in interstate commerce from Bellevue, Washington to Oakland, California *with intent to avoid prosecution* in the State of Washington *for the crime of the December 1, 1962 robbery of a grocery store in Kirkland, Washington.* Petitioner was accused in Counts I and II as follows:

> COUNT I. On or about March 8, 1963, aiding, counselling and abetting said travel by Young, all in violation of Title 18, United States Code, Sections 1073 and 2.

COUNT II. On or about March 8, 1963, knowingly concealing and failing to report the specific crime which the petitioner, by Count I, was accused of aiding, all in violation of Title 18, United States Code, Section 4.

An essential element to each of the last three counts of the Indictment (as supplemented by the Bill of Particulars) was the accusation that on or about March 22, 1963, one Richard James Young committed a crime against the United States under the provisions of Title 18, United States Code, Section 1073, by travelling in foreign commerce from San Francisco, California to Rio de Janeiro, Brazil, *with intent to avoid prosecution in the State of Washington for the crime of the December 1, 1962 robbery of a grocery store in Kirkland, Washington.* In Counts III, IV and V, petitioner was accused as follows:

COUNT III. On or about March 22, 1963, aiding, counselling and abetting said travel by Young, all in violation of Title 18, United States Code, Sections 1073 and 2.

COUNT IV. On or about March 29, 1963, knowingly concealing and failing to report the specific crime which the petitioner, by Count III, was accused of aiding, all in violation of Title 18, United States Code, Section 4.

COUNT V. On or about March 29, 1963, knowing that Young had committed the specific crime which the petitioner, by Count III, was accused of aiding, the petitioner comforted and assisted Young in order to prevent and hinder his apprehension, trial and punishment, all in violation of Title 18, United States Code, Sections 1073 and 3.

The petitioner was tried by jury and acquitted of Count I and convicted of the remaining counts of the Indictment. Judgment and sentence was entered as follows:

COUNT II. Imprisonment for three years.

COUNT III. Imprisonment for five years and a fine of $5,000.

COUNT IV. Imprisonment for three years.

COUNT V. Imprisonment for two and one-half years.

The sentences on Counts II, IV and V were made concurrent with the sentence on Count III.

An appeal was taken to the United States Court of Appeals for the Ninth Circuit. The Court of Appeals affirmed the judgment and sentence of the District Court. In so doing, the Court of Appeals considered only those assignments of error which related to Count III because of the concurrent nature of the sentence on the other Counts. Appendix B hereto, *infra*, p. 5a.

The evidence at the trial established that on December 10, 1962 a State warrant was issued for the arrest of Richard James Young for a robbery which was alleged to have occurred December 1, 1962 at a grocery store in Kirkland, Washington. The charge was filed in State court. About $2,600 was taken in this robbery (R. 22, 28, 29, 34).[2]

On January 2, 1963 Richard James Young left the State of Washington for the first time since the Kirkland robbery and went to Portland, Oregon (R. 611). On Jan-

[2] Parenthetical references are to the typewritten record of the trial in District Court.

uary 7, 1963 the United States charged Young with unlawful flight from Washington with intent to avoid prosecution for the Kirkland grocery store robbery (R. 43).

While in Oregon, Young planned and, on January 24, 1963 robbed a Portland, Oregon bank of approximately $55,000 (R. 686). Young then travelled from Portland, Oregon to Salt Lake City, Utah to Los Angeles, California and then to the San Francisco area. Young stayed in the San Francisco area, with three exceptions noted hereafter, from February 4 to March 28, 1963 (R. 688-692, 699).

Young and one Jerome Oral Tichenor came to Vancouver, Washington for a few hours on February 19, 1963. What the purpose of the trip was and what took place there is not known as the witness Young refused to answer such questions on the grounds that the answers might tend to incriminate him (R. 695, 696).

Young and Tichenor came to Seattle on March 4, 1963 and planned and, on March 8, 1963, robbed the Northgate branch of the Bon Marche Department Store of approximately $40,000 (R. 723). Within hours after this robbery, Young and Tichenor fled from Bellevue, Washington to Oakland, California (R. 655).

There was some evidence, which the Circuit Court apparently believed, that Young returned to Seattle, Washington again on or about March 22, 1963, robbed a bank of between $4,000 and $7,000 and returned to the San Francisco area. Appendix B hereto, *infra*, p. 4a.

On March 28, 1963 Richard James Young left San Francisco, California, bound for Rio de Janeiro, Brazil (R. 633). Young was returned from Brazil and arrested on April 5, 1963 (R. 737).

The petitioner, Ned Edward Hett, was born February 13, 1935 and is a practicing attorney in the City of Seattle, Washington, having been admitted to practice in the Spring of 1960 (R. 1055, 1060). The petitioner first met Richard James Young on June 24, 1961 when Young was referred to the petitioner's law office through the local Legal Aid Bureau concerning a divorce (R. 1064). Petitioner represented Young on this matter and Young and his second wife on many other matters until June, 1963 (R. 675).

The petitioner testified extensively in his own defense (R. 1055-1187; 1217-1393). He denied the accusations of aiding, counselling and abetting the trips of Young from Bellevue, Washington to Oakland, California and from San Francisco, California to Rio de Janeiro, Brazil as alleged in Counts I and III. Petitioner also denied knowingly concealing and failing to report the interstate and foreign trip of Young as alleged in Counts II and IV other than to the extent to which he was bound to remain silent by the Canons of Professional Ethics of the American Bar Association and the Washington Court rules on Professional Ethics. He also denied comforting and assisting Young to prevent and hinder his apprehension as alleged in Count V.

This denial of participation was one of the two prongs

of petitioner's defense on the facts. It is conceded, for the purpose of this petition only, that the Government presented sufficient evidence to prevent petitioner from obtaining a reversal of his conviction on the basis of lack of evidence of the petitioner's denied participation.

The other prong of petitioner's defense on the facts related to the motive, purpose and intention of Richard James Young in travelling from Bellevue, Washington to Oakland, California on March 8, 1963 and in travelling from San Francisco, California to Rio de Janeiro, Brazil on March 28, 1963. The trial court instructed the jury (with the approval of the Government) that a necessary element of each and every count of the Indictment was

> ". . . the purpose and intent of Richard James Young in taking the trips in interstate and foreign commerce on or about March 8, 1963 and March 28, 1963 must have been to avoid prosecution in the State of Washington for the robbery of a grocery store which occurred in Kirkland, King County, Washington on December 1, 1962.
>
> By this it is meant that you must be satisfied beyond a reasonable doubt that a principal reason for Young's making such trips was to avoid prosecution for the Kirkland robbery. In this regard, the fact that Young may also have had an intent to make such trips intending to avoid prosecution for other crimes is no defense so long as one of his principal reasons was to avoid prosecution for the Kirkland robbery" (R. 1442)

The evidence presented by the Government on the issue of Young's motive, purpose and intent consisted of the testimony of Richard James Young and to some extent that of Jerome Oral Tichenor. The witness Young had previously

been convicted of and sentenced for one Federal crime and was awaiting sentence on three others.

The witness Young was called by respondent (R. 607). On direct examination Young testified that he was in Kirkland, Washington on December 1, 1962, and that on the day following he went to Sequim, Washington (R. 608). Young further testified as to his activities and contacts with petitioner between early December, 1962 and March 3, 1963 (R. 608-644). He testified that on March 4, 1963 he came to Seattle (R. 645) and that he left Seattle on March 8, 1963 in petitioner's private airplane (R. 652). He also testified as to his motive and purpose in making the interstate and foreign flights which were at issue in the trial. On cross-examination Young testified that he also came into the State of Washington on February 19, 1963 but refused, on the grounds of self-incrimination, to state why he had come into the State (R. 695, 696).

When asked his reason for coming to Seattle, Washington on March 4, 1963, the witness refused to answer on the grounds of self-incrimination, which claim of privilege was sustained (R. 702, 704). A similar claim of privilege by the witness was allowed by the trial court with regard to the witness' reason for being at the Northgate Bon Marche during the week of March 4, 1963 (R. 705); where the witness was at 7:00 p.m., March 8, 1963 (R. 706); where the witness had been prior to being at the Bellevue Airport on the night of March 8, 1963 (R. 707); and why the witness wanted to travel from Seattle, Washington to

Oakland, California on the night of March 8, 1963 (R. 707, 708).

It was stipulated by counsel following this last in a series of claims of privilege, that Richard James Young and Jerome Oral Tichenor robbed the Northgate Branch of the Bon Marche on March 8, 1963 (R. 723). At that time the court ruled that questions as to Young's motives or purposes in travelling might be asked by petitioner and respondent but that Young, in answering the questions, was entitled to exclude from his answers any reference to motives based on possible crimes about which he had refused to testify on the grounds of self-incrimination.[3]

Thereafter respondent, on re-direct, was allowed to ask

---

[3] The witness was asked by petitioner, "Why was it you wanted to move from Seattle to Oakland that night [March 8, 1963]?" The Court permitted the witness to refuse to answer on the grounds that it might incriminate the witness (R. 707, 708, 711). It was thereafter stipulated that the witness robbed the Northgate branch of the Bon Marche on March 8, 1963. Respondent then stated its understanding of the permissable scope of inquiry to be:

> "Your Honor, we will inquire and I have no objection to Mr. Guterson inquiring, as to any other reasons he may have had for leaving that day." (R. 720).

Petitioner then asked if "it would still be proper to go on and then ask the witness as to whether or not this [the Bon Marche robbery] was the reason why he left an hour or two after this robbery?" (R. 721). The court ruled:

> "I won't require the witness to answer that specific question, but I would permit you to ask a general question as to whether he left the State of Washington in connection with a crime he committed in the State of Washington or to avoid arrest while he was in the State of Washington during that period. He has already admitted that he committed one crime here. But anything that directly ties him in with a robbery where there was also a possible Federal crime committed, if he stands on his Constitutional rights I am going to recognize his privilege." (R. 721, 722).

Young whether at least one of the reasons for the flights of the witness was to avoid arrest as to all matters including the Kirkland robbery, and the witness indicated that it was (R. 754, 755).

On re-cross the witness Young was again allowed to refuse to answer inquiry on the grounds of self-incrimination as to whether he had signed a statement absolutely negating as a reason for interstate or foreign travel any fear whatsoever of prosecution for the Kirkland robbery (R. 770-775).

The witness Tichenor was called by respondent. On direct examination by the Government, Tichenor testified freely and without limitation. The witness testified that on March 4, 1963 he and Richard James Young flew to Seattle and that they left in petitioner's airplane on March 8, 1963 (R. 528, 535).

On cross-examination, the witness immediately began a series of refusals with regard to questions, the answers to which he claimed would tend to incriminate him (R. 551, 573, 577, 591, 592). The witness was asked his purpose in coming to Seattle on March 4, 1963 and he was permitted to decline to answer (R. 577). He was similarly permitted to refuse to answer as to what he and Young had done between 9:00 and 9:30 p.m. on the night of March 8, 1963 (R. 583, 584).

VI.

REASONS FOR GRANTING THE WRIT

Question A: Right to Cross-Examine

1. The decision of the court below is in conflict with decisions of the Second, Fourth and Eighth Circuit Court of Appeals in *United States v. Cardillo*, 316 F. 2d 606 (C.A. 2, 1963) cert. den. 375 U.S. 822, 11 L. Ed. 2d 1136, 84 S. Ct. 60 (1963), reh. den. 375 U.S. 926, 11 L. Ed 2d 169, 84 S. Ct. 263 (1963); *United States v. Smith*, 342 F. 2d 525 (C.A. 4, 1965); *Smith v. United States*, 331 F. 2d 265 (C.A. 8, 1964); and *Coil v. United States*, 343 F. 2d 573 (C.A. 8, 1965), and impliedly in conflict with the decision of this Court in *Douglas v. State of Alabama*, 380 U.S. 415, 85 S. Ct. 1074, 13 L. Ed 2d 934 (1965).

Each of the cases from the Second, Fourth and Eighth Circuits holds that the direct testimony of a witness should be stricken if that witness later takes the Fifth Amendment and refuses on cross-examination to answer germane questions on the subject matter of his direct examination. In each of these cases, the court first concerns itself with the direct examination of the witness, then the cross-examination, and then ascertains whether the cross-examination is on collateral or germane matters.

As the court stated in the *Cardillo* case:

> ". . . if the witness by invoking the privilege precludes inquiry into the details of his direct testimony, there may be a substantial danger of prejudice because

> the defense is deprived of the right to test the truth of his direct testimony, and, therefore, that witness's testimony should be stricken in whole or in part."

In the instant case, the court concerned itself exclusively with the issue of whether the witness waived the Fifth Amendment privilege, decided that there was no waiver, and then concluded that the trial court properly refused to strike the direct testimony of the witness. There was no inquiry as to whether the questions which the witnesses refused to answer were collateral or germane to the direct testimony of the witnesses. Appendix B, *infra*, pp. 9a, 10a. In so doing, the court failed to adopt and apply the rule which prevails in the Second, Fourth and Eighth Circuits. It is this conflict between Circuits which petitioner believes should be resolved.

The decision of the court below is also impliedly in conflict with the decision of this Court in *Douglas v. State of Alabama*, 380 U.S. 415, 85 S. Ct. 1074, 13 L. Ed. 2d 934 (1965). In that case a witness hostile to the prosecution refused to answer when asked by the prosecutor whether the witness had signed a statement implicating the witness and the petitioner in the crime with which the petitioner was charged. The prosecutor was permitted to read the statement and call three law enforcement officers to testify that it was given by the witness voluntarily. The petitioner was not afforded the opportunity to cross-examine as to the contents of the statement as it was never admitted into evidence and the witness refused to answer whether or not he had made such a statement.

This Court reversed petitioner's conviction and held the reading of the statement and the testimony of the officers should have been excluded or stricken as petitioner was denied the right to cross-examine the witness as to the contents of the statement which related to material matters. Certainly the court below in this case should have applied the same rule when the testimony which was admitted was from two willing Government witnesses who answered all questions propounded to them by the Government but refused to answer germane questions on the subject matter of the direct examination when asked by petitioner on cross-examination.

2. Clearly, the question is of great importance in the administration of justice in Federal criminal cases. Settlement of the question is plainly in the public interest since it is bound to be raised again and again in Federal criminal prosecutions in which the Government's case depends in whole or in part on the testimony of a witness who has participated with the accused in the crime or a crime related to that which the accused is charged. A substantial percentage of government prosecutions were in this category even before the decision in *Murphy v. Waterfront Commission of New York Harbor*, 378 U.S. 52, 84 S. Ct. 1954, 12 L. Ed. 2d 678 (1964). The number of times the question raised by petitioner will be again raised by persons accused of Federal crimes is bound to increase now that a witness may also decline to answer questions the answers to which might tend to incriminate him of charges under State law. The

Government will not even be able to grant such a witness immunity from such State charges to permit the accused appropriate latitude in cross-examination.

3. The question is an important question of Constitutional law which has not been, but should be, settled by this Court. Cross-examination has been called "the greatest legal engine ever invented for the discovery of truth."[4] It is well settled that the right of a defendant in a Federal court to confront the witnesses against him, guaranteed by the Sixth Amendment, includes the right to cross-examine the witness. *Pointer v. State of Texas*, 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923 (1965); *Greene v. McElroy*, 360 U.S. 474, 79 S. Ct. 1400, 3 L. Ed. 2d 1377 (1959).

What has not been settled is whether an accused is denied the right to confront a witness essential to a fair trial by a trial court's refusal to strike the direct testimony of that witness after the witness invokes the Fifth Amendment and refuses to answer, on cross-examination, germane questions on the same subject matter as the direct examination. This Court should exercise its discretionary power to review and resolve for all of the United States such an important and fundamental question.

4. The decision of the Court below is believed to be erroneous and the conflicting decisions in the other three Circuits correct. This Court has previously held in *Alford v. United States*, 282 U.S. 687, 51 S. Ct. 218, 75 L. Ed. 624

---

[4] 5 Wigmore, Evidence, § 1367 (3rd ed. 1940).

(1931) that a Federal conviction will be reversed if the cross-examination of Government witnesses has been unreasonably limited.

The restriction of cross-examination in petitioner's trial was clearly unreasonable. The Government's chief witness, Richard James Young, was involved, between December 1, 1962 and March 28, 1962, in at least four separate robberies yielding a total of over $100,000. Young refused to answer questions relating to one of the robberies which yielded about $40,000. Young also refused to answer questions relating to what he was doing in the State of Washington on February 19, 1963. He may have committed another robbery or a more heinous crime on that day. All of these questions were germane to the issue of why Young made the two trips which were the basis for the charges against petitioner.

The trial court instructed that in order to convict petitioner the jury must find that a principal reason for the flight of the Government witness in interstate commerce on March 8, 1963 and in foreign commerce on March 28, 1963 was to avoid prosecution for the December 1 robbery which yielded but $2,600 which is about two percent of the proceeds from the four known robberies. The flight of the witness on March 8, 1963 took place within hours after a $40,000 robbery. The preliminary idea of the flight to Brazil first formed after a $55,000 robbery on January 24, 1963. The plans for the Brazilian flight were not perfected and executed until after the perpetration of at least four robberies.

Against this background of instruction and known fact, the "why" of the witness' flight became all important as to each of the counts of the Indictment. Against this background, the witness refused to answer questions, the answers to which probably would have shown strong motive for both flights which was not based on the December 1, 1962 Kirkland robbery – i.e., what the witness did on February 19, 1963. Against this background, the witness refused to testify as to whether the March 8, 1963 $40,000 robbery motivated his flight on that day. Against this background, the witness refused to testify as to whether or not he signed a statement in the presence of his counsel and under oath disclaiming the Kirkland robbery as a motive for either of the two flights in question. The admission into evidence of such statement was denied. Against this background, the witness *was* permitted to testify as to part *but not required to testify as to all* of his activity during the time in question which might have supplied a motive for his travel. Of perhaps greatest importance, the witness was permitted to testify directly as to his motive and purpose in travelling without any reference to the extent to which he was motivated by other possible (or stipulated) crimes about which he had refused to testify.

Petitioner would not be raising this question to this Court if the questions asked on cross-examination had been directed solely toward collateral attacks on the credibility of the witness. Petitioner recognizes that the trial court has the right to limit cross-examination on collateral mat-

ters. However, in this case, none of the questions were in the nature of collateral attacks on the witness Young's credibility. Instead, every question was directed to the "why" of Young's movements on the very dates involved in petitioner's trial. What could be more germane?

Clearly, the fate of an accused should not rest only on that portion of the material testimony that the accusing Government deems to be of importance, but rather should rest on all material testimony subject to reasonable cross-examination. The rule adopted by the Second, Fourth and Eighth Circuit Court of Appeals should have been adopted by the Ninth Circuit and applied to petitioner's case by striking the the direct examination of the witnesses Tichenor and Young.

Question B: Interpretation of 18 U.S.C. §1073

1. The question affects the lives of many persons and is of great importance in the administration of justice in Federal and state criminal cases. It is an important question which is rarely presented in a forum which is subjected to review by this Court and, as a result, the question has not been, but should be, settled by this Court.

Petitioner, respondent and the court below were unable to find any reported cases dealing with the question presented in this petition. This is to be expected. The entire philosophy that caused the Congress to pass Title 18, United States Code, Section 1073, was to provide a Federal jurisdictional basis and the attendant F.B.I. investigative

strength to assist local law enforcement at the crime scene in apprehending one who was charged with a serious state crime and who had fled the scene to avoid prosecution.[5]

Invariably, when the felon is caught, he is simply held under the Federal warrant until the local authorities extradite and then prosecute him for the state felony. The Federal charge is only rarely pursued beyond the Commissioner's level and few of these are appealed. Yet Title 18, United States Code, Section 1073, is applied to a significant number of persons each year whose rights and lives are just as surely affected by its application as those of persons accused of Federal crimes of a nature which are frequently reviewed by appellate courts.

---

[5] This legislative intent is clearly demonstrated by the language of House Report No. 827, Aug. 1, 1961 (To accompany H.R. 468 [18 U.S.C. 1073], U.S. Congressional and Administrative News [87th Congress, 1st Session, 1961] p. 3242. It is there stated that the purpose of the legislation is to ". . . assist local law enforcement agencies in the apprehension of fugitives through the services of the Federal Government."

The Report, at p. 3243, goes on to say:

> "The reason for the foregoing conclusion by the Department of Justice is that the established practice under existing law will not be altered by the proposed amendment. That practice is to limit Federal intervention generally to those instances wherein the State has indicated a clear intention to secure the return of the fugitive for the purpose of bringing him to trial before a State Court. Such intent may be evinced either by the existence of a State indictment or the expressed intention on the part of the local law enforcement official to prosecute the fugitive. Thus, the effect of this practice is to limit the application of the act, and, thus, the investigative efforts of the Federal Bureau of Investigation, to those criminal cases, in which the State has demonstrated sufficient interest in obtaining the return of the fugitive to warrant incurring the necessary expenses incident to extradition. Experience has indicated that the States are not willing to undertake such expenditures unless the fugitive is wanted for a serious crime or a person's presence as a witness is necessary for the successful prosecution of a serious crime."

Petitioner submits that this Court's discretionary power to review should be exercised when the question presented affects a large number of persons in contact with the administration of justice in Federal and state criminal cases but the nature of the Federal activity is such that it rarely is exercised in such a manner as to be subject to review by this Court. It may well be several decades before this question is again presented for review – yet, in the meantime, literally thousands of persons will have been subjected to the authority of the Federal government under Title 18, United States Code, Section 1073, without the benefit of the safeguards of review by this Court.

2. The decision of the court below is believed to be erroneous. Petitioner submits that it is simply not a crime under Title 18, United States Code, Section 1073, for a person charged with robbery in one state to travel in interstate or foreign commerce if the origin of the trip is not in the charging state. Therefore, Counts III, IV and V of the Indictment against the petitioner failed to charge the accused with a crime. The plain meaning of the statute is that the flight must be from the place seeking to prosecute the one in flight. This is exactly what the statute says:

> "Whoever moves or travels in interstate or foreign commerce with intent . . . to avoid prosecution . . . *under the laws of the place from which he flees* . . . shall be fined not more than $5,000 or imprisoned not more than five years, or both." (Emphasis added)

The rule of statutory construction which calls for giving

language its plain, obvious and rational meaning is well known to this Court. If there be any question regarding interpretation of the statute, the rule requiring a criminal statute to be strictly interpreted in favor of the accused should be followed. See *Smith v. United States*, 360 U.S. 1, 3 L. Ed. 2d 1041, 79 S. Ct. 991 (1959), and see also the District of Columbia Court of Appeals decision in *Durbin v. United States*, 221 F. 2d 520 (1954) where a Circuit Court held the rule of strict construction to apply to another facet of Title 18, United States Code, Section 1073.

The statute plainly states that the flight of the witness Young must be one "to avoid prosecution . . . under the laws of the place from which he flees." Perhaps the law should be different – maybe it should be a crime to go from California to Brazil to avoid a Washington prosecution. However, under the law as it now plainly reads, the charge must be that the felon moved from Washington to California; or from Washington through California to Brazil; or from Washington to Brazil. This was clearly not the charge against petitioner in the flight of Young to Brazil from California allegedly to avoid prosecution under the laws of a place from which he did not flee – namely, Washington. The fact that the trip may have been one which was a part of a trip originating in the charging state is of absolutely no significance as the jury was not required to find this to be the fact in order to convict the petitioner. In fact, the jury acquitted the petitioner of Count I which involved the flight of the witness from the charging state.

Petitioner submits that the court below erred in failing to interpret the statute in the manner urged by petitioner.

VII.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

GORDON C. CULP
812 Hoge Building
Seattle, Washington 98104

MURRAY B. GUTERSON
812 Hoge Building
Seattle, Washington 98104
Counsel for Petitioner

January 25, 1966